

HOUSE BILL No. 1588

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30-16; IC 36-7-9.

Synopsis: Unsafe buildings. Establishes procedures for real property containing an unsafe building to be forfeited to the county or municipality if the owner of the unsafe building willfully refuses to comply with an order to remove the unsafe building. Increases from \$1,000 to \$15,000 the civil penalty that may be imposed for the willful refusal to comply with an order to remove an unsafe building. Provides that forfeiture is an alternative to the civil penalty. Provides for the disposition of property acquired by forfeiture.

Effective: July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Local Government.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1588

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-30-16 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2005]:
4 **Chapter 16. Actions for Forfeiture of Real Property Containing**
5 **an Unsafe Building**
6 **Sec. 1. This chapter applies only to a forfeiture action**
7 **commenced as a result of a willful failure to comply with an order**
8 **issued under IC 36-7-9-5(a)(7).**
9 **Sec. 2. The definitions in IC 36-7-9 apply throughout this**
10 **chapter.**
11 **Sec. 3. (a) If the hearing authority issues an order authorizing**
12 **the enforcement authority to commence an action under this**
13 **chapter, the enforcement authority in the county in which the**
14 **unsafe building is located may bring an action in the name of the**
15 **authority's municipality or county for the forfeiture of the unsafe**
16 **building and the tract of land on which the unsafe building is**
17 **situated.**



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(b) An action for forfeiture may be brought in any circuit or superior court in the county in which the unsafe building is located.

(c) Upon a showing by a preponderance of the evidence that the building in question is unsafe and that the person subject to an order issued under IC 36-7-9-5(a)(7) has willfully refused to comply with the order, the court shall, subject to the right, title, or interest in the property of any other party that is of record and is determined under section 5 of this chapter, order the property forfeited to the county or municipality.

(d) The court shall order forfeitures and dispositions under this section:

(1) with due provision for the rights of innocent persons; and

(2) as provided under section 4 of this chapter.

Sec. 4. When an action is filed under section 3 of this chapter, the enforcement authority may move for an order to have property subject to forfeiture seized by a law enforcement agency. The judge shall issue such an order upon a prima facie showing of evidence that the building is unsafe and that a person subject to an order issued under IC 36-7-9-5(a)(7) has willfully refused to comply with the order.

Sec. 5. (a) Property subject to forfeiture under this chapter shall be seized by a law enforcement officer upon the issuance of a court order under section 4 of this chapter.

(b) When property is seized under subsection (a), the law enforcement officer making the seizure may place the property under seal pending forfeiture and final disposition.

(c) Property seized under subsection (a) is not subject to replevin but is considered to be in the custody of the law enforcement officer making the seizure, subject only to order of the court.

(d) If property is seized under subsection (a), the enforcement authority shall, not later than thirty (30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, serve notice of seizure upon each person whose right, title, or interest in the property is of record in the county recorder's office or other office authorized to receive or record real property ownership interests.

(e) A person whose right, title, or interest in a property seized under subsection (a) is of record under subsection (d) may at any time file a complaint seeking:

(1) replevin;

(2) foreclosure; or

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(3) another appropriate remedy;
to which the state may answer in forfeiture within the appropriate
statutory period. The court shall promptly set the matter for a
hearing and, in the case of replevin or foreclosure, shall set the
hearing as provided by the applicable statutory provisions.

Sec. 6. (a) If a person holding a valid:

(1) lien;
(2) mortgage;
(3) security interest; or
(4) interest under a conditional sales contract;
in a property seized under section 5(a) of this chapter did not know
that an unsafe building was situated on the property, the court
shall determine whether the secured interest is equal to or greater
than the appraised value of the property.

(b) The appraised value of a property is to be determined under
subsection (a) as of the date of judgment on a wholesale basis by:

(1) agreement between the secured party referred to in
subsection (a) and the enforcement authority; or
(2) the inheritance tax appraiser for the county in which the
action is brought.

(c) If the amount due the secured party referred to in subsection
(a) is equal to or greater than the appraised value of the property,
the court shall order the property released to the secured party.

(d) If the amount due the secured party referred to in subsection
(a) is less than the appraised value of the property, the secured
party may pay into the court an amount equal to:

(1) the owner's equity, which shall be the difference between
the appraised value and the amount of the lien, mortgage,
security interest, or interest under a conditional sales
contract; plus

(2) the amount of the costs set forth in IC 36-7-9-12.

Upon payment, the county or municipality shall relinquish all
claims to the property.

SECTION 2. IC 36-7-9-7 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 7. (a) **This section does not apply
to an order issued under section 5(a)(7) of this chapter.**

~~(a)~~ (b) A hearing must be held relative to each order of the
enforcement authority, except for an order issued under section 5(a)(2),
5(a)(3), 5(a)(4), or 5(a)(5) of this chapter. An order issued under
section 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter becomes final
ten (10) days after notice is given, unless a hearing is requested before
the ten (10) day period ends by a person holding a fee interest, life

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1 estate interest, or equitable interest of a contract purchaser in the
 2 unsafe premises. The hearing shall be conducted by the hearing
 3 authority.

4 ~~(b)~~ (c) The hearing shall be held on a business day no earlier than
 5 ten (10) days after notice of the order is given. The hearing authority
 6 may, however, take action at the hearing, or before the hearing if a
 7 written request is received by the enforcement authority not later than
 8 five (5) days after notice is given, to continue the hearing to a business
 9 day not later than fourteen (14) days after the hearing date shown on
 10 the order. Unless the hearing authority takes action to have the
 11 continued hearing held on a definite, specified date, notice of the
 12 continued hearing must be given to the person to whom the order was
 13 issued at least five (5) days before the continued hearing date, in the
 14 manner prescribed by section 25 of this chapter. If the order being
 15 considered at the continued hearing was served by publication, it is
 16 sufficient to give notice of the continued hearing by publication unless
 17 the enforcement authority has received information in writing that
 18 enables it to make service under section 25 of this chapter by a method
 19 other than publication.

20 ~~(c)~~ (d) The person to whom the order was issued, any person having
 21 a substantial property interest in the unsafe premises that are the
 22 subject of the order, or any other person with an interest in the
 23 proceedings may appear in person or by counsel at the hearing. Each
 24 person appearing at the hearing is entitled to present evidence,
 25 cross-examine opposing witnesses, and present arguments.

26 ~~(d)~~ (e) At the conclusion of any hearing at which a continuance is
 27 not granted, the hearing authority may make findings and take action
 28 to:

- 29 (1) affirm the order;
- 30 (2) rescind the order; or
- 31 (3) modify the order, but unless the person to whom the order was
- 32 issued, or counsel for that person, is present at the hearing, the
- 33 hearing authority may modify the order in only a manner that
- 34 makes its terms less stringent.

35 In addition to affirming the order, in those cases in which the hearing
 36 authority finds that there has been a willful failure to comply with the
 37 order, the hearing authority may impose a civil penalty in an amount
 38 not to exceed five thousand dollars (\$5,000). The effective date of the
 39 civil penalty may be postponed for a reasonable period, after which the
 40 hearing authority may order the civil penalty reduced or stricken if the
 41 hearing authority is satisfied that all work necessary to fully comply
 42 with the order has been done. For purposes of an appeal under section

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8 of this chapter or enforcement of an order under section 17 of this chapter, action of the hearing authority is considered final upon the affirmation of the order, even though the hearing authority may retain jurisdiction for the ultimate determination of a fine.

~~(e)~~ **(f)** If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

~~(f)~~ **(g)** The board or commission having control over the department shall, at a public hearing, after having given notice of the time and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The hearing authority shall use this schedule to fix the amount of the performance bond required under subsection ~~(e)~~. **(f)**.

~~(g)~~ **(h)** The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

~~(h)~~ **(i)** A civil penalty under subsection ~~(d)~~ **(e)** may be collected in the same manner as costs under section 13 of this chapter. The amount of the civil penalty that is collected shall be deposited in the unsafe building fund.

SECTION 3. IC 36-7-9-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7.5. (a) This section applies only to an order issued under section 5(a)(7) of this chapter.**

(b) A hearing must be held relative to an order of the enforcement authority described in subsection (a). The hearing shall be conducted by the hearing authority.

(c) The hearing shall be held on a business day not earlier than ten (10) days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five (5) days after notice is given, to continue the hearing to a business day not later than fourteen (14) days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a

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1 specified date, notice of the continued hearing must be given to the
 2 person to whom the order was issued at least five (5) days before
 3 the continued hearing date, in the manner prescribed by section 25
 4 of this chapter. If the order being considered at the continued
 5 hearing was served by publication, it is sufficient to give notice of
 6 the continued hearing by publication unless the enforcement
 7 authority has received information in writing that enables the
 8 enforcement authority to make service under section 25 of this
 9 chapter by a method other than publication.

10 (d) The person to whom the order was issued, any person having
 11 a substantial property interest in the unsafe premises that are the
 12 subject of the order, or any other person with an interest in the
 13 proceedings may appear in person or by counsel at the hearing.
 14 Each person appearing at the hearing is entitled to present
 15 evidence, cross-examine opposing witnesses, and present
 16 arguments.

17 (e) At the conclusion of any hearing at which a continuance is
 18 not granted, the hearing authority may make findings and take
 19 action to:

- 20 (1) affirm the order;
- 21 (2) rescind the order; or
- 22 (3) modify the order, but, unless the person to whom the order
 23 was issued, or counsel for that person, is present at the
 24 hearing, the hearing authority may modify the order in only
 25 a manner that makes the terms of the order less stringent.

26 (f) In addition to affirming the order in those cases in which the
 27 hearing authority finds that there has been a willful failure to
 28 comply with the order, the hearing authority may:

- 29 (1) impose a civil penalty not to exceed fifteen thousand
 30 dollars (\$15,000); or
- 31 (2) issue an order authorizing the enforcement authority to
 32 commence a forfeiture action under IC 32-30-16.

33 (g) The effective date of a civil penalty imposed under
 34 subsection (f)(1) may be postponed for a reasonable period, after
 35 which the hearing authority may order the civil penalty reduced or
 36 stricken if the hearing authority is satisfied that all work necessary
 37 to fully comply with the order has been done. For purposes of an
 38 appeal under section 8 of this chapter or enforcement of an order
 39 under section 17 of this chapter, action of the hearing authority is
 40 considered final upon the affirmation of the order, even though the
 41 hearing authority may retain jurisdiction for the ultimate
 42 determination of a fine.

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(h) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order and shows good cause for the request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(i) The board or commission having control over the department shall, at a public hearing, after having given notice of the date, time, and place of the hearing by publication in accordance with IC 5-3-1, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The hearing authority shall use this schedule to fix the amount of the performance bond required under subsection (h).

(j) The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

(k) A civil penalty imposed under subsection (f)(1) may be collected in the same manner as costs under section 13 of this chapter. The amount of the civil penalty that is collected shall be deposited in the unsafe building fund.

SECTION 4. IC 36-7-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) An action taken under section ~~7(d)~~ 7(e), 7.5(e), or 7.5(f)(1) of this chapter is subject to review by the circuit or superior court of the county in which the unsafe premises are located, on request of:

- (1) any person who has a substantial property interest in the unsafe premises; or
- (2) any person to whom that order was issued.

(b) A person requesting judicial review under this section must file a verified complaint including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten (10) days after the date when the action was taken.

(c) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the hearing authority.

SECTION 5. IC 36-7-9-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) This section applies to real property acquired

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by a county or municipality under IC 32-30-16.

(b) The county or municipality may dispose of the real property:

(1) under an urban homesteading program under IC 36-7-17;

(2) under IC 36-1-11;

(3) by transferring title to a redevelopment commission at no cost to the commission for sale or grant under IC 36-7-14-22.2, IC 36-7-15.1-15.1, or IC 36-7-15.1-15.2; or

(4) under section 30 of this chapter.

SECTION 6. IC 36-7-9-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) This section applies to real property acquired by a county or municipality under IC 32-30-16.

(b) The executive of a county or municipality may:

(1) identify the property described in subsection (a) that the county or municipality desires to transfer to a nonprofit corporation for use for the public good; and

(2) set a date, time, and place for a public hearing to consider the transfer of the property to a nonprofit corporation.

(c) Notice of the property identified under subsection (b) and the date, time, and place for the hearing on the proposed transfer of the property shall be published in accordance with IC 5-3-1. The notice must include a description of the property by:

(1) legal description; and

(2) parcel number or street address, or both.

The notice must specify that the county or municipality will accept applications submitted by nonprofit corporations as provided in subsection (e) and will hear any opposition to a proposed transfer.

(d) After the hearing set under subsection (b), the executive of the county or municipality shall make a final determination concerning:

(1) the properties that are to be transferred to a nonprofit corporation;

(2) the nonprofit corporation to which each property is to be transferred; and

(3) the terms and conditions of the transfer.

(e) To be eligible to receive property under this section, a nonprofit corporation must file an application with the executive of the county or municipality. The application must state the property that the corporation desires to acquire, the use to be made of the property, and the time anticipated for implementation of the use. The application must be accompanied by documentation verifying the nonprofit status of the corporation and must be

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1 signed by an officer of the corporation. If more than one (1)
 2 application for a single property is filed, the executive shall
 3 determine which application is to be accepted based on the benefit
 4 to be provided to the public and the neighborhood and the
 5 suitability of the stated use for the property and the surrounding
 6 area.

7 (f) After the hearing set under subsection (b) is held and the
 8 final determinations are made under subsection (d), the county
 9 commissioners shall cause all delinquent taxes, special assessments,
 10 penalties, and interest recorded on the tax duplicate with respect
 11 to a property being transferred under this section to be removed
 12 from the tax duplicate and order the county auditor to prepare a
 13 deed transferring the property to the nonprofit corporation. The
 14 deed must provide for:

- 15 (1) the use to be made of the property;
- 16 (2) the time within which the use must be implemented and
- 17 maintained;
- 18 (3) any other terms and conditions that are established by the
- 19 executive of the county or municipality; and
- 20 (4) the reversion of the property to the county or municipality
- 21 if the grantee nonprofit corporation fails to comply with the
- 22 terms and conditions.

23 If the grantee nonprofit corporation fails to comply with the terms
 24 and conditions of the transfer and title to the property reverts to
 25 the county or municipality, the property must be disposed of under
 26 this section.

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